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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,903	03/09/2007	Hiroshi Akiyama	OTA-0007	3863
23353 7590 09/17/2009 RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036				
EXAMINER SULLIVAN, DANIELLE D				
ART UNIT		PAPER NUMBER		
1616				
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09/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/562,903

**Applicant(s)**

AKIYAMA ET AL.

**Examiner**

DANIELLE SULLIVAN

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/US)  
Paper No(s)/Mail Date 11/08/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1 and 2 are pending examination.

#### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on July, 1, 2003. It is noted, however, that applicant has not filed a certified copy of the PCT/JP2003/008362 application as required by 35 U.S.C. 119(b).

#### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Japan on 3/09/2007. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

**Suggestion:** Place an article at the beginning of each claim ("A" & "The").

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "pesticide characterized in the presence of hydrogenated starch hydrolysate as effective constituent and blended surfactant of alkyl glucoside-derivatives". It is unclear if the claim is reciting a pesticide composition comprising hydrogenated starch hydrolysate and alkylglucoside derivatives or if the pesticide is hydrogenated starch hydrolysate blended with alkylglucoside-derivatives. Hence, it is unclear what is encompassed by the terminology "characterized in the presence of" and "as effective constituent". Therefore, the metes and bounds of claim 1 cannot be determined, rendering the claim vague and indefinite. It is suggested that applicant amend the claim to recite 'a pesticide composition comprising hydrogenated starch hydrolysate and alkyl glucoside derivatives' if this is what is intended. For the purpose of examination the recitation has been treated as such.

Claim 1 also recites "alkyl glucoside-derivatives" which is indefinite. The specification is clear on what compounds are alkyl glucosides (see page 4, paragraph 3

of specification), however "alkyl glucoside-derivatives" are not specifies. Hence, the metes and bounds of claim 1 cannot be deciphered.

Claim 2 recites "alkyl glucoside-derivatives at solid concentrations of 0.005 to 20% by weight" which is indefinite. The metes and bounds of what the concentration is relative to cannot be deciphered. Is the concentration relative to the total composition with an additional pesticide or the concentration relative to the hydrogenated starch hydrolysate?

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 rejected under 35 U.S.C. 102(b) as being anticipated by Burzio et al. (US 5,496,494).

Burzio et al. discloses a detergent compositions characterized by the addition to the washing cycle of a co-builder based on non-reducing carbohydrates. The co-builders are selected from a finite selection of sugar alcohols including hydrogenated starch hydrolysates (column 2, lines 20-27). Non-reducing carbohydrates are selected from alkyl glucosides and alkyl-polyglucosides (column 2, lines 11-19).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cutter et al. (US 6,117,820) in view of Levin et al. (US 5,166,193).

**Applicant's Invention**

Applicant claims a composition comprising hydrogenated starch hydrolysate and alkyl glucoside. Claim 2 specifies the composition comprises 0.005 to 20% alkyl glucoside.

**Determination of the scope and the content of the prior art**

**(MPEP 2141.01)**

Cutter et al. teach an agricultural formulation comprising a) an agrochemical electrolyte and c) an alkyl glucoside (column 1, lines 62-67). The invention provides for a structured aqueous system, even in the presence of a second dispersed phase, such that a substantially homogeneous dispersion gives a uniform concentration in respect of all the components within the formulation (column 2, lines 18-23). Examples 1 to 28 comprise 48% glyphosate and 11-15% alkyl glucoside (AGRIMUL PG2067).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Cutter et al. does not teach the use of hydrogenated starch hydrolysate. It is for this reason that Levin et al. is joined.

Levin et al. teach a method of killing pests comprising exposing the pests to a substance which is cannot transport across the digestive tract membranes of the pest upon ingestion (abstract). The compound causes an osmotically driven influx of water into their intestines and is selected from the L-hexose hydrogenated starch hydrolysate (column 2, lines 43-63). The compound provides an easily deployed, mammalian non-toxic method of killing insects. The active can be manufactured, handled, packaged and dispensed by humans with no toxic hazard to themselves or anyone inadvertently or purposely ingesting or inhaling the substance (column 2, lines 8-19).

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Cutter et al. Levin et al. to further include hydrogenated starch hydrolysate. One would have been motivated to substitute hydrogenated starch hydrolysate in place of the glyphosate because Levin et al. teach that it acts as a agrochemical against insects, while having no toxic hazard to mammals. Hence, it would have been within the skill of one ordinary in the art to utilize the aqueous alkyl glucoside adjuvant as a carrier for hydrogenated starch hydrolysate.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burzio et al. (US 5,496,494).

### **Applicant's Invention**

Applicant claims a composition comprising hydrogenated starch hydrolysate and alkyl glucoside. Claim 2 specifies the composition comprises 0.005 to 20% alkyl glucoside.

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

The teachings of Burzio et al. are addressed in above 102(b) rejection. Burzio et al. teach the cobuilder, hydrogenated starch hydrolysate, can be within the range of from 1 to 10% of the detergent composition (column 2, lines 48-51).

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Burzio et al. does not teach the composition comprises 0.005 to 20% alkyl glucoside. However, in view of In re Aller, Lacey, and Hall, 105 USPQ 233 (C.C.P.A. 1955), "change in concentration is not patentable modification, however, such changes may impart patentability to process if ranges claimed produce new and unexpected results". Since the claims are drawn to a composition and Burzio et al. teach the components disclosed in the present invention and only lack in specifying the amounts obtained the present claims are prima facie obvious.

### **Finding of prima facie obviousness**



### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Burzio et al. to further include 0.005 to 20% alkyl glucoside. One would have been motivated to manipulate ranges during routine experimentation to discover the optimum or workable range since the Burzio et al. provides the range of the cobuilder, hydrogenated starch hydrolysate, as 1 to 10% the total formulation. Hence, one would have been motivated to manipulate the range of the alkyl glucosides from the remainder of the formulation to an amount of 0.005 to 20%.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
Patent Examiner  
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